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No. 02 911

In The
Supreme Court of the United States

POLO RALPH LAUREN CORPORATION
AND JOSE PANCHI,

Petitioners,

-against-

MARGARET M. BELEKIS;
HELEN M. BELEKIS;
CHEAP MAGGIE, INC.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a private party, enlisted by law enforcement officers to assist in the execution of a search warrant on a single occasion, is entitled to assert a defense of qualified immunity, a pure question of law reserved by the Court in *Richardson v. McKnight*, 521 U.S. 399, 408 (1997), and immediately appealable under *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985) and its progeny.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Third Circuit Local Appellate Rule 26.1, appellant Polo Ralph Lauren Corporation makes the following disclosure:

1) *Polo Ralph Lauren Corporation* does not have a parent corporation;

2) *Goldman Sachs Corporation* owns 10% or more of Polo Ralph Lauren Corporation's stock;

3) *Fireman's Fund Insurance Company*, Polo Ralph Lauren Corporation's insurance carrier, is not a party to the proceeding before this Court but has a financial interest in the outcome of the proceeding.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS AND ORDERS BELOW	1
BASIS FOR JURISDICTION	1
STATUTORY PROVISION INVOLVED	4
STATEMENT OF THE CASE	5
ARGUMENT	9
THE COURT SHOULD ISSUE A WRIT OF CERTIORARI TO RESOLVE THE IMPORTANT QUESTION OF FEDERAL LAW RESERVED IN *RICHARDSON V. McKNIGHT*: WHETHER A PRIVATE PARTY, ENLISTED BY LAW ENFORCEMENT OFFICERS TO ASSIST IN THE EXECUTION OF A SEARCH WARRANT ON A SINGLE OCCASION, IS ENTITLED TO ASSERT A DEFENSE OF QUALIFIED IMMUNITY	9
A Private Party Enlisted By Law Enforcement To Assist In The Execution Of A Search Warrant Is Entitled To Assert A Defense of Qualified Immunity	11
CONCLUSION	18

TABLE OF CONTENTS – Continued

Page

APPENDIX

Third Circuit Order (11/4/02) ..... App. 1

District Court Stay Order (12/21/01) ..... App. 3

District Court Summary Judgment Order (11/15/01) ..... App. 5

TABLE OF AUTHORITIES

CASES

Bartell v. Lohiser, 215 F.3d 550 (6th Cir. 2000).....15

Behrens v. Pelletier, 516 U.S. 299 (1996).....2, 3, 4, 11

Brunette v. Humane Society of Ventura County, 294 F.3d 1205 (9th Cir. 2002)..... 4

Calloway v. Boro of Glassboro Dep't of Police, 89 F. Supp.2d 543 (D.N.J. 2000).....15

Camilo-Robles v. Hoyos, 151 F.3d 1 (1st Cir. 1998).....15

Colston v. Barnhart, 146 F.3d 282 (5th Cir. 1998) 3

Cullinan v. Abramson, 128 F.3d 301 (6th Cir. 1997).....15

Doe v. City of Roseville, 296 F.3d 431 (6th Cir. 2002)..... 3

Entick v. Carrington, 19 How. St. Tr. 1029 (K.B. 1965).....11

Firestone v. Rice, 71 Mich. 377, 38 N.W. 885 (1888).....13

Hanlon v. Berger, 526 U.S. 808 (1999) 11

Jensen v. Lane County, 222 F.3d 570 (9th Cir. 2000).....10

Johnson v. Jones, 515 U.S. 304 (1994) 2, 3, 4, 11

Krueger v. Wisconsin, 171 Wis. 566, 177 N.W. 917 (1920).....13

Massachusetts v. Sheppard, 468 U.S. 981 (1984)..... 8

Mejia v. City of New York, 119 F. Supp.2d 232 (E.D.N.Y. 2000).....15, 17

Merrill v. Palmer, 13 N.H. 184 (1842).....13

Mitchell v. Forsyth, 472 U.S. 511 (1985).....2, 11, 12

Novak v. Wisconsin, 185 Wis. 616, 202 N.W. 336 (1925).....12

TABLE OF AUTHORITIES – Continued

Pennsylvania v. Sadowsky, 80 Pa. Super. 496, 1923 WL 3548 (1922) 13

Proffitt v. Ridgway, 279 F.3d 503 (7th Cir. 2002) 4

Reed v. Rice, 25 Ky. 44, 1829 WL 1312 (1829) 14, 15

Richardson v. McKnight, 521 U.S. 399 (1997) ..... *passim*

Robinson v. Georgia, 93 Ga. 77, 18 S.E. 1018 (1893) 13

Rodriques v. Furtado, 950 F.2d 805 (1st Cir. 1991) 16

Sherman v. Four County Counseling Ctr., 987 F.2d 397 (7th Cir. 1993) 16

United States v. Leon, 468 U.S. 897 (1984) 8

Warner v. Grand County, 57 F.3d 962 (10th Cir. 1995) 15, 16

Winfield v. Bass, 106 F.3d 525 (4th Cir. 1997) 3

STATUTES & RULES

S. Ct. Rule 10 ..... 10, 11, 12

28 U.S.C. § 1254 4

28 U.S.C. § 1291 4

42 U.S.C. § 1983 ..... *passim*

OTHER AUTHORITIES

Hilliard, *The Law of Torts* 365-66 (1859) 13

PETITION FOR WRIT OF CERTIORARI

OPINIONS AND ORDERS BELOW

The unreported opinion of the United States Court of Appeals for the Third Circuit, as well as the orders of the U.S. District Court for the District of New Jersey denying summary judgment and staying the trial-level proceedings, are reprinted in the attached appendix.

BASIS FOR JURISDICTION

On June 24, 1999, Margaret Belekis and her mother, Helen Belekis, sued Polo Ralph Lauren Corporation its employee, Jose Panchi (the "Polo defendants"), and other private parties, alleging multiple causes of action under 42 U.S.C. § 1983 and New Jersey tort law, arising from their participation in the execution of a search warrant at "Cheap Maggie," Margaret Belekis' discount clothing store in Hoboken, New Jersey, at the request of the Hudson County Prosecutor's Office. The other defendants settled, but the Polo defendants moved for summary judgment on the ground that, among other things, they were entitled to qualified immunity under *Richardson v. McKnight*, 521 U.S. 399, 413 (1997) (reserving for future consideration the question of whether qualified immunity should be afforded to "a private individual briefly associated with a government body, serving as an adjunct to government in an essential government activity, or acting under close official supervision"). On November 15, 2001, the district court denied summary judgment in an order that did not explicitly address the question of law reserved in *Richardson*, and which specified three disputed issues of fact, none

of which were relevant to the question of qualified immunity. *App. 4-5.*

On December 11, 2001, the Polo defendants filed a notice of appeal from so much of the district court's order as denied their claim of qualified immunity. On December 21, 2001, the district court entered an order staying the case pending the Third Circuit's determination of "the issue of whether Defendants, as private individuals, are entitled to the protection of qualified immunity pursuant to *Richardson v. McKnight*, 521 U.S. 399, 402 (1997)." *App. 3.* By Order dated November 4, 2002, the Third Circuit dismissed the Polo defendants' appeal for lack of jurisdiction. *App. 1.*

The issue presented for review – "Whether a private party, enlisted by law enforcement officers to assist in the execution of a search warrant on a single occasion, is entitled to assert a defense of qualified immunity" – is a threshold question of law and, as such, is immediately appealable from the denial of qualified immunity. *See Richardson*, 521 U.S. at 402 (deciding interlocutory appeal from a district court's pre-trial denial of private prison guards' claim that they were entitled to assert a defense of qualified immunity) (citing *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985) (holding that public officials may immediately appeal the denial of qualified immunity)). Although this Court held in *Johnson v. Jones*, 515 U.S. 304 (1994) that questions of evidentiary sufficiency are not immediately appealable from the denial of qualified immunity, it later explained in *Behrens v. Pelletier*, 516 U.S. 299, 312-13 (1996) that *Johnson* does not preclude an immediate appeal in *every* case where there are disputed facts but, rather, only where there is a genuine issue of fact material to question of qualified immunity itself.

The Court in *Behrens* further noted that even *Johnson* envisioned that where, as here, a district court fails to specifically identify those factual disputes underlying its denial of qualified immunity at the summary judgment stage, the court of appeals cannot simply decline jurisdiction but, rather, is *required* to undertake a "detailed evidence-based review of the record" to determine whether any disputed fact material to the question of qualified immunity actually exists. *Behrens*, 516 U.S. at 309, 313 (quoting *Johnson*, 515 U.S. at 319). This has been the approach of Circuits *other than* the Third Circuit. *See, e.g.*, *Doe v. City of Roseville*, 296 F.3d 431, 437-38 (6th Cir. 2002) (holding that, under *Behrens* and *Johnson*, court of appeals has jurisdiction to review the record to determine which facts district court likely assumed where "the district court did not identify the facts that it assumed when it denied summary judgment to . . . defendants claiming qualified immunity"); *Colston v. Barnhart*, 146 F.3d 282, 284-86 (5th Cir. 1998) (holding that, under *Behrens* and *Johnson*, court of appeals must review the record to determine which facts the district court likely assumed where there is a "lack of specificity" in the "district court's explanation of the nature of the factual dispute in light of the summary judgment evidence"); *Winfield v. Bass*, 106 F.3d 525, 534-35 & n.6 (4th Cir. 1997) (holding that "when a district court fails to set forth fully the factual basis" underlying its qualified immunity ruling, the court of appeals "reviews the evidence properly before the district court for purposes of considering the summary judgment question").

Here, the three disputed facts listed by the district court in its order denying summary judgment were not relevant to the question of qualified immunity.[1] Moreover, the terms of the Third Circuit's order dismissing the Polo defendants' appeal makes clear that the court of appeals did not undertake *any* review of the record – much less the "detailed evidence-based review of the record" required by *Behrens* and *Johnson* – to determine whether there were any disputed facts relevant to the question of qualified immunity upon which the district court may have relied in denying summary judgment. Accordingly, the Third Circuit properly had jurisdiction to review the threshold legal question presented on appeal under 28 U.S.C. § 1291. This Court, in turn, has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The issue presented for review arises under 42 U.S.C. § 1983, which provides in relevant part as follows:

[1] The district court's conclusion that a question of fact exists as to whether Jose Panchi engaged in "state action," though critical to the question of substantive Section 1983 liability, is not material to the question of qualified immunity. Indeed, the qualified immunity analysis *assumes* that Panchi's conduct constituted "state action" for, if it did not, there could be no substantive Section 1983 liability in the first instance. *See, e.g.*, *Brunette v. Humane Society of Ventura County*, 294 F.3d 1205, 1207 (9th Cir. 2002) (holding that private actors who accompanied police officers executing search warrant were not state actors); *Proffitt v. Ridgway*, 279 F.3d 503, 507-08 (7th Cir. 2002) (holding that private actor who "render[ed] brief, ad hoc assistance to a public officer" does not by that fact alone become a state actor).

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

STATEMENT OF THE CASE

On or about May 29, 1997, Roadway Express, Inc., delivered a shipment of Burberry shirts to the Statco warehouse in Jersey City, New Jersey. Ten cartons, totaling about three hundred shirts with the cut number "TB176," did not make it to the warehouse and were reported stolen to Cluett Designer Group, the authorized manufacturer and distributor of shirts with the Burberry label. Cluett filed a loss claim with Roadway, which hired an outside investigator to investigate the theft.

On June 17, 1997, a Cluett employee named Susan Waite, who worked as a distribution manager at the Statco warehouse, but who previously was a Burberry salesperson, was shopping at "Cheap Maggie," Margaret Belekis' discount clothing store, and saw Burberry shirts selling for $19.95, less than the cost of manufacture and far below their $95.00 retail price. Further investigation revealed that the cut number of the shirts being sold at Cheap Maggie ("TB176") matched the cut number of the missing Roadway shirts. These findings were conveyed to the

Hudson County Prosecutor's Office, which commenced its own investigation. Specifically, after interviewing Susan Waite, Lieutenant Timothy Griffin sent Hudson County Investigator Adrian Corrigan to Cheap Maggie, where he purchased another Burberry shirt with a "TB176" cut number for $19.99, and which Waite identified as being identical to the one she had purchased the day before. While in the store, Corrigan noticed a Polo Ralph Lauren shirt with a cut tag, thought it might be stolen, and bought it, too. Investigator Corrigan then returned to headquarters and, with Lieutenant Griffin, drafted a search warrant and supporting affidavit setting forth probable cause for, and seeking permission to perform, a search of Cheap Maggie for stolen Burberry shirts. The materials were approved by Assistant Hudson County Prosecutor Jack Hill, and the final search warrant was typed up by Hill's secretary. The affidavit and warrant were then presented to New Jersey Superior Court Judge Kevin G. Callahan, who signed the warrant.

That same evening, the search warrant was executed at Cheap Maggie by Investigator Corrigan, Lieutenant Griffin, Assistant Prosecutor Hill, and several uniformed members of the Hoboken Police Department. After the police secured the store, which was being minded by Helen Belekis, a number of private individuals employed by Cluett and Roadway entered the store for the purpose of identifying potentially stolen property. During the search, Investigator Corrigan noticed in plain view other Polo Ralph Lauren shirts with cut tags, which is one sign of altered merchandise from a stolen load. After conferring with Lieutenant Griffin, and with the approval of Assistant Prosecutor Hill, Investigator Corrigan borrowed Sergeant John Merced's cell phone and called Jose Panchi,

a Polo security and loss prevention supervisor with whom he was acquainted, told him they were executing a search warrant, and asked him to come to Cheap Maggie to inspect the shirts to determine whether they were, in fact, stolen. Panchi told his supervisor, Vincent Volpi, that he had received a police request for assistance and, with Volpi's permission, he responded to the store.

Panchi testified at his deposition that, when he arrived at the store, he looked at the Polo shirts, could not tell whether they were stolen, and left. Margaret Belekis testified at her deposition that Panchi – whom she thought was some sort of law enforcement officer – did not simply look at the Polo display but, rather, participated fully in the search. It appears that Ms. Belekis mistook Panchi, who is Hispanic, for one of two Hispanic police officers whose actions on the day of the search corresponded to those described by her. In any event, Ms. Belekis admitted that she did not have any evidence of Polo's involvement in the preparation and securing of the search warrant other than her personal belief that Panchi "was invited to conduct a general search, a dragnet search of my store."

At some point, Helen Belekis said something to one of the law enforcement officers, who then read the search warrant and realized that the search items were erroneously listed as "heroin" and "drug paraphernalia." Recognizing that the search warrant, in contrast to the search warrant affidavit, was defective, the Hudson County investigators concluded their search and left the store with three Burberry shirts. It was later determined that Assistant Prosecutor Hill's secretary had made a mistake in conforming the final typed warrant to the draft.

On June 24, 1999, Margaret Belekis and her mother, Helen Belekis, filed a civil complaint in the United States District Court for the District of New Jersey alleging that the private companies and their employees who assisted the Hudson County Prosecutor's Office in executing the defective search warrant at Cheap Maggie, including Polo Ralph Lauren Corporation and its employee, Jose Panchi, violated the plaintiffs' constitutional rights under 42 U.S.C. § 1983 (and committed various state-law torts). The law enforcement officers who participated in the search were not named in the complaint, presumably because they would have been entitled to qualified immunity. *See United States v. Leon*, 468 U.S. 897, 922-23 (1984) (recognizing that police officers can objectively reasonably rely on an invalid warrant to conduct a search); *Massachusetts v. Sheppard*, 468 U.S. 981, 988 (1984) (holding that that officer's execution of search in reliance upon flawed warrant was objectively reasonable). All of the defendants, other than the Polo defendants, have settled.

On November 15, 2001, the district court denied the Polo defendants' motion for summary judgment in an order that did not explicitly address the issue of qualified immunity. *App. 4*. On December 11, 2001, the Polo defendants filed a notice of appeal from the district court's denial of qualified immunity. On December 21, 2001, the district court entered an order staying the case pending the Third Circuit's determination of "the issue of whether Defendants, as private individuals, are entitled to the protection of qualified immunity pursuant to *Richardson v. McKnight*, 521 U.S. 399, 402 (1997)." *App. 3*. The plaintiffs moved the Third Circuit to dismiss the Polo defendants' appeal for lack of jurisdiction. On November 4,

2002, the court of appeals granted the plaintiffs' motion. *App. 1.*

ARGUMENT

THE COURT SHOULD ISSUE A WRIT OF CERTIORARI TO RESOLVE THE IMPORTANT QUESTION OF FEDERAL LAW RESERVED IN *RICHARDSON v. McKNIGHT*: WHETHER A PRIVATE PARTY, ENLISTED BY LAW ENFORCEMENT OFFICERS TO ASSIST IN THE EXECUTION OF A SEARCH WARRANT ON A SINGLE OCCASION, IS ENTITLED TO ASSERT A DEFENSE OF QUALIFIED IMMUNITY.

In *Richardson v. McKnight*, 521 U.S. 399 (1997), this Court held that prison guards employed by a private prison management firm are not entitled to assert a defense of qualified immunity from suit by prisoners charging a violation of 42 U.S.C. § 1983. The Court, however, was careful to limit its decision to the specific facts presented, and purposefully included the following relevant caveat:

> [W]e have answered the immunity question narrowly, in the context in which it arose. That context is one in which a private firm, systematically organized to assume a major lengthy administrative task (managing an institution) with limited direct supervision by the government, undertakes that task for profit and potentially in competition with other firms. *The case does not involve a private individual briefly associated with a government body, serving as an adjunct to government in an essential government activity, or acting under close official supervision.*

Id. at 413 (emphasis added). *See Jensen v. Lane County*, 222 F.3d 570, 576 (9th Cir. 2000) (noting that the Court in *Richardson* "left open the question whether some private actors closely related to governmental function might have some kind of qualified immunity in contexts unrelated to prisons").

The "important question of federal law" reserved in *Richardson* is the precise issue presented for review in this case. *See* S. Ct. Rule 10(c). Specifically, at the request of the Hudson County Prosecutor's Office, Jose Panchi participated in the execution of a search warrant at Cheap Maggie on a single occasion. As discussed below, not only have law enforcement officers routinely depended upon just this sort of transitory assistance from private citizens to safeguard the public but, historically, such private citizens were cloaked with the same (and often broader) immunity than that afforded to the public officers themselves. Furthermore, the imposition of civil liability upon private citizens who respond to requests for assistance by law enforcement officials will dissuade citizens from assisting in the increasingly difficult job of criminal law enforcement, deter the very cooperation upon which effective law enforcement depends, and, thereby, seriously undermine the ability of the Nation's law enforcement agencies to protect the public.

In addition, the Third Circuit's refusal to address this pure issue of law in the context of an interlocutory appeal simply because the district court's summary judgment order identified several disputed facts *unrelated* to the question of qualified immunity, and without engaging in its own "detailed evidence-based review of the record,"

conflicts with the relevant decision of this Court in *Richardson*, *Johnson*, and *Behrens*, *see* S. Ct. Rule 10(c), and with the decisions of its sister circuits cited above, *see* Sup. Ct. Rule 10(a). Indeed, the Third Circuit's approach flies in the face of *Richardson* itself, which was decided by this Court in the context of a pre-trial interlocutory appeal. *See* 521 U.S. at 402 (*citing Mitchell v. Forsyth*, 472 U.S. at 530).

Accordingly, the Court should seize this opportunity to answer the important question of law left open in *Richardson*, and adopt a rule which encourages private citizens to assist the police without fear of future civil liability. Specifically, the Court should issue a writ of certiorari and hold that private actors enlisted by law enforcement officials to assist in the execution of a search warrant are entitled to assert a defense of qualified immunity.

A Private Party Enlisted By Law Enforcement To Assist In The Execution Of A Search Warrant Is Entitled To Assert A Defense of Qualified Immunity.

When law enforcement officers execute a search warrant "for stolen property, the presence of third parties for the purpose of identifying the stolen property has long been approved by this Court and our common law tradition." *Hanlon v. Berger*, 526 U.S. 808, 611-12 (1999) (noting that, at common law, the owner of stolen goods was required to "'attend the execution of the warrant to show them to the officer'") (quoting *Entick v. Carrington*, 19 How. St. Tr. 1029, 1067 (K.B. 1965)). Under such circumstances, the *public* officials involved in the execution of the search warrant are afforded the protection of qualified immunity in order to preserve their ability to serve the

public good without being distracted by the threat of lawsuits, and to ensure that talented candidates are not deterred from entering public service. *Richardson v. McKnight*, 521 U.S. 399, 407-08 (1997) (discussing *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). Whether these underlying purposes of qualified immunity militate in favor of extending its protection to a *private* citizen who responds to a police request for assistance in executing a search warrant presents a compelling and "important question of federal law that has not been, but should be, settled by the Court." *See* S. Ct. Rule 10(c).

In *Richardson*, the Court delineated a two-part test to determine whether qualified immunity should be extended to any given class of private defendants. Specifically, the Court directed lower courts to consider: 1) whether history reveals a tradition of immunity in the relevant context, 521 U.S. at 404-07; and 2) whether the immunity doctrine's purposes warrant immunity for such private actors, *id.* at 407-12. Here, both factors militate in favor of affording private citizens enlisted to assist in the execution of a search warrant the right to assert a defense of qualified immunity.

1) History Reveals A Firmly Rooted Tradition Of Immunity In The Context Of Private Citizens Enlisted To Assist In The Execution Of Warrants.

There is a long history in this country and at common law of law enforcement officers' enlisting private citizens, as bystanders or as a *posse comitatus*, to assist in the performance of their law enforcement duties, including the execution of warrants. *See, e.g., Novak v. Wisconsin*, 185 Wis. 616, 202 N.W. 336 (1925) (recognizing that "[f]rom

time immemorial sheriffs have had the power to summon the posse comitatus to aid them in making arrests and executing writs and process," including search warrants); *Merrill v. Palmer*, 13 N.H. 184, 185 (1842) ("But being commissioned by the sheriff, he acted under color of office. He was an officer *de facto*, and that was sufficient."); Hilliard, *The Law of Torts* 365-66 (1859) ("Although an officer, in order to justify himself alone, must prove a legal commission and authority; a third person, claiming under his acts, is required only to show that he assumed to be an officer and acted as such."). In such cases, the private citizen enlisted to assist in the execution of a warrant was entitled to at least the same protections afforded to the public officer. *See Pennsylvania v. Sadowsky*, 80 Pa. Super. 496, 1923 WL 3548 at *1-*2 (1922) (recognized the continuing vitality of the common law rule that "private persons may respond to a call from a known officer" for assistance "without pausing to inquire into the regularity of the process" and, having done so, are immune from liability even if the *public* officer is later determined to have been "acting wrongfully and may [himself] be personally liable for a false arrest") (citing cases); *Krueger v. Wisconsin*, 171 Wis. 566, 177 N.W. 917, 923-24 (1920) ("We hold that all who were there, constituting the posse, lending assistance to the deputy United States marshal in the apprehension of those for whom he held warrants, were acting under his direction and command, constructively at least, and were entitled to the same protection and immunity extended to the deputy marshal himself."); *Robinson v. Georgia*, 93 Ga. 77, 18 S.E. 1018, 1019 (1893) (holding that a private person summoned to assist the sheriff in the execution of a warrant "is entitled to the same protection in the discharge of his duties as the sheriff himself"); *Firestone v. Rice*, 71 Mich. 377, 38 N.W.

885 (1888) (holding that a private person enlisted to assist the sheriff is immune from suit); *Reed v. Rice*, 25 Ky. 44, 1829 WL 1312, at *3 (1829) (holding that a private person enlisted to assist in the execution of a search warrant is immune from suit even if the sheriff is not).

Thus, in contrast to the private prison guards at issue in *Richardson*, history reveals a firmly rooted tradition of affording to private citizens enlisted to aid in the execution of a warrant the same immunity (indeed, in some circumstances even broader immunity, than that) afforded to law enforcement officials themselves. Accordingly, this first factor militates in favor of making available to such private parties the defense of qualified immunity.

2) The Underlying Purposes Of The Qualified Immunity Doctrine Warrant Its Extension To Private Citizens Enlisted By Law Enforcement Officials To Assist In The Execution Of A Search Warrant.

In addition to the firmly rooted tradition of affording immunity to private citizens enlisted by law enforcement officials to assist in the execution of a search warrant, the purposes underlying the immunity doctrine also warrant its extension to such private individuals. The necessity of protecting the government's ability to perform its traditional law enforcement function weighs heavily in favor of providing qualified immunity to private actors who render necessary assistance to the police. In this regard, the need to facilitate such assistance by private citizens has long been acknowledged:

> The right and power of an officer to summon the citizen to aid in the execution of precepts to him

> directed, is highly necessary, if not indispensable to the well being of society. If all those summoned had to examine and judge of the legality of the process, and then act upon their own responsibility, this necessary power in the officer would, in practice, be paralyzed in a great degree.

Reed v. Rice, 25 Ky. 44, 1829 WL 1312, at *3 (1829). For these very reasons, those federal courts that have considered the circumstances under which a private party is protected by qualified immunity after *Richardson* have universally held that one who is enlisted to assist law enforcement in performing an essential government function on a single occasion, or under close official supervision, is entitled to assert a qualified immunity defense. *See Bartell v. Lohiser*, 215 F.3d 550 (6th Cir. 2000) (holding that directors of non-profit foster care contractor, which placed a child at State agency's direction, and under its close supervision, is entitled to assert qualified immunity); *Camilo-Robles v. Hoyos*, 151 F.3d 1, 10 (1st Cir. 1998) (holding that private psychiatrist employed by State to evaluate police officers entitled to assert qualified immunity); *Cullinan v. Abramson*, 128 F.3d 301, 310 (6th Cir. 1997) (holding that city's private outside legal counsel entitled to qualified immunity following *Richardson*); *Mejia v. City of New York*, 119 F. Supp.2d 232, 268 (E.D.N.Y. 2000) (holding that air courier enlisted by law enforcement to assist in an arrest entitled to assert qualified immunity); *Calloway v. Boro of Glassboro Dep't of Police*, 89 F. Supp.2d 543, 557 n.21 (D.N.J. 2000) (holding that private individual asked to assist in a single criminal investigation entitled to assert qualified immunity). This approach is consistent with that adopted even prior to the *Richardson* decision. *See, e.g., Warner v. Grand County*, 57 F.3d 962 (10th Cir. 1995) (holding that female director of

crisis center was entitled to qualified immunity for conducting a strip search of female detainees at the request of police); *Sherman v. Four County Counseling Ctr.*, 987 F.2d 397, 403-06 (7th Cir. 1993) (holding that a private psychiatric facility that participated in an emergency involuntary detention, pursuant to a court order, was entitled to qualified immunity); *Rodriques v. Furtado*, 950 F.2d 805, 815 (1st Cir. 1991) (holding that a physician who conducted a body cavity search at the direction of the police was entitled to qualified immunity).

In all of these cases, the courts have recognized that the underlying purposes of the doctrine of qualified immunity would be defeated if private actors were held liable for errors committed by public officials to whose aid they had come. As the Tenth Circuit has explained, if private citizens "are not permitted to raise the shield of qualified immunity, they might reject requests to aid state officials in performing governmental functions" which would, in turn, "clearly constrain state officials' agility in performing such functions, frustrate the government's investigatory power, and thereby limit the state's ability to serve the public good." *Warner*, 57 F.3d at 967. *See also Sherman*, 987 F.2d at 405-06 (holding that policy justifications underlying the doctrine of qualified immunity apply with full force to situation of private hospital asked to care for involuntarily committed patient since, if the hospital was subject to suit, it might refuse to accept patients in the future, increasing the already strained resources of the State's public hospitals); *Rodriques*, 950 F.2d at 815 (holding that public policy warranted extension of qualified immunity to private physician enlisted to assist in execution of body cavity search warrant because "exposing private physicians to § 1983 liability without the shield of

qualified immunity would not only be unfair, it could deter them from assisting in the execution of valid warrants"). Indeed, it is indisputable that the chilling effect of denying private citizens the protection of qualified immunity would severely hamper law enforcement efforts:

> There can be little doubt that the threat of civil liability will distract private citizens from their duty to promptly render aid to the police when it is needed and thus, will hinder law enforcement.

Mejia, 119 F. Supp.2d at 264.

This assessment is unassailable. Law enforcement officers must operate in an increasingly dangerous, complex, and secretive world. They cannot perform their critical function alone. Yet, unless private citizens are protected from liability when enlisted to render assistance to the police, they will be, at best, reluctant and, at worst, unwilling to come to the aid of law enforcement when requested to do so. Accordingly, this Court should hold – as it suggested in *Richardson* – that a private individual, briefly associated with the government for the purpose of assisting in the execution of a search warrant on a single occasion, is entitled to assert a defense of qualified immunity.

CONCLUSION

For these reasons, petitioners Polo Ralph Lauren Corporation and Jose Panchi respectfully request that the Court grant their petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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Polo Ralph Lauren Corporation
and Jose Panchi

Dated: December 11, 2002

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 01-4429

MARGARET M. BELEKIS; HELEN M. BELEKIS;
CHEAP MAGGIE, INC.

v.

BURBERRY LIMITED; POLO RALPH LAUREN CORPORATION; INTERCEPT INVESTIGATIONS, INC.; ROADWAY EXPRESS, INC.; CLUETT DESIGNER GROUP, INC.; SUSAN WAITE; KENNETH MCCANN; JOYCE LEUNG; LEANNE TEMPLETON; THOMAS FEE; JOSE PANCHI

Polo Ralph Lauren Corporation and Jose Panchi,

Appellants

(D.C. Civil No. 99-cv-02964)

Before: SLOVITER and FUENTES, *Circuit Judges,* and FULLAM, *District Judge*[*]

ORDER

Defendants Polo Ralph Lauren Corporation and Jose Panchi appealed from the District Court's order filed November 15, 2001 denying their motion for summary judgment. Defendants contend that they are entitled to summary judgment on the ground of qualified immunity as a matter of law. The Plaintiffs have moved to dismiss

[*] Hon. John P. Fullam, United States District Court for the Eastern District of Pennsylvania, sitting by designation.

the appeal on the ground that this court lacks jurisdiction over this interlocutory appeal. In its order denying Defendants' motion for summary judgment the District Court stated that the remaining questions of material fact precluded summary judgment in favor of any party, specifically listing three remaining questions of fact that preclude summary judgment and then stated that summary judgment is denied "as a result of these and other disputed questions of material fact."

After reviewing the briefs of the parties and hearing their counsel on oral argument, this Court concludes that we have no jurisdiction over the interlocutory appeal. We will grant Plaintiffs' motion to dismiss the appeal and deny their request for counsel fees and costs as sanctions against the Polo Defendants.

By the Court,

/s/ Dolores K. Sloviter
Circuit Judge

Dated: 11/04/02

ARL/cc: Mark A. Berman, Esq.; Henry H Rossbacher, Esq.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Margaret Belekis, Helen M. Belekis, and Cheap Maggie, Inc.,

Plaintiffs,

v.

Burberry Ltd., Polo Ralph Lauren Corp., et al.,

Defendants.

Hon.
Dennis M. Cavanaugh

ORDER

Civil Action No.:
99-2964

(Filed
Dec. 21, 2001)

DENNIS M. CAVANAUGH, U.S.D.J.

This matter comes before the Court upon Defendants', Polo Ralph Lauren and Jose Panchi, submission of a Notice of Appeal to the Third Circuit from this court's Order denying the Defendants' motion for summary judgment. The basis for this interlocutory appeal is the issue of whether Defendants, as private individuals, are entitled to the protection of qualified immunity pursuant to *Richardson v. McKnight,* 521 U.S. 399 (1997). Defendants seek a stay of the proceedings on this matter pending appeal;

IT IS on this 21st day of December 2001;

ORDERED that Defendants' application to stay the proceeding pending appeal is **granted**.

/s/ Dennis M. Cavanaugh
Dennis M. Cavanaugh, U.S.D.J.

Original: Clerk
Copies: All Counsel of Record
File

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NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Margaret Belekis, Helen M. Belekis, and Cheap Maggie, Inc., Plaintiffs, v. Burberry Ltd., Polo Ralph Lauren Corp., et al., Defendants.	**Hon. Dennis M. Cavanaugh** **OPINION AND ORDER** Civil Action No.: 99-2964 (Filed Nov. 15, 2001)

DENNIS M. CAVANAUGH, U.S.D.J.

This matter comes before the Court upon a motion by Defendants, Polo Ralph Lauren Corporation and Jose Panchi for summary judgment dismissing Plaintiffs' claims under 42 U.S.C. § 1983 and further allegations of conspiracy to violate the Fourth Amendment, violations of the New Jersey Constitutional provisions on search and seizure and common law claims in tort.

The Court having reviewed the submissions of the parties in support of and opposition to these motions, concludes that remaining questions of material fact exists [sic] that preclude summary judgment or dismissal in favor of any party. The remaining questions of fact include, but are not limited to:

1. Whether Defendants relied on the search warrant, which was defective on its face, or whether the issuing judge and Defendants

relied on Officer Corrigan's affidavit to the warrant application.

2. Whether the language on the face of the warrant was sufficient to indicate officer's interest in stolen shirts and whether the conceded typographical error on the warrant was reasonable and the subsequent search conducted in good faith.

3. Whether the initial contact between Jose Panchi and Adrian Corrigan, in assisting the police in identifying stolen shirts, was "state action" or was Mr. Panchi acting as a private party thus defeating Plaintiff's allegations that the parties conspired to violate Plaintiffs' Fourth Amendment rights.

As a result of these and other disputed questions of material fact;

IT IS hereby ordered on this the 13th day of November 2001, that Defendants Motion for summary judgment is **denied**.

/s/ Dennis M. Cavanaugh
Dennis M. Cavanaugh, U.S.D.J.

Original: Clerk
Copies: All Counsel of Record
File